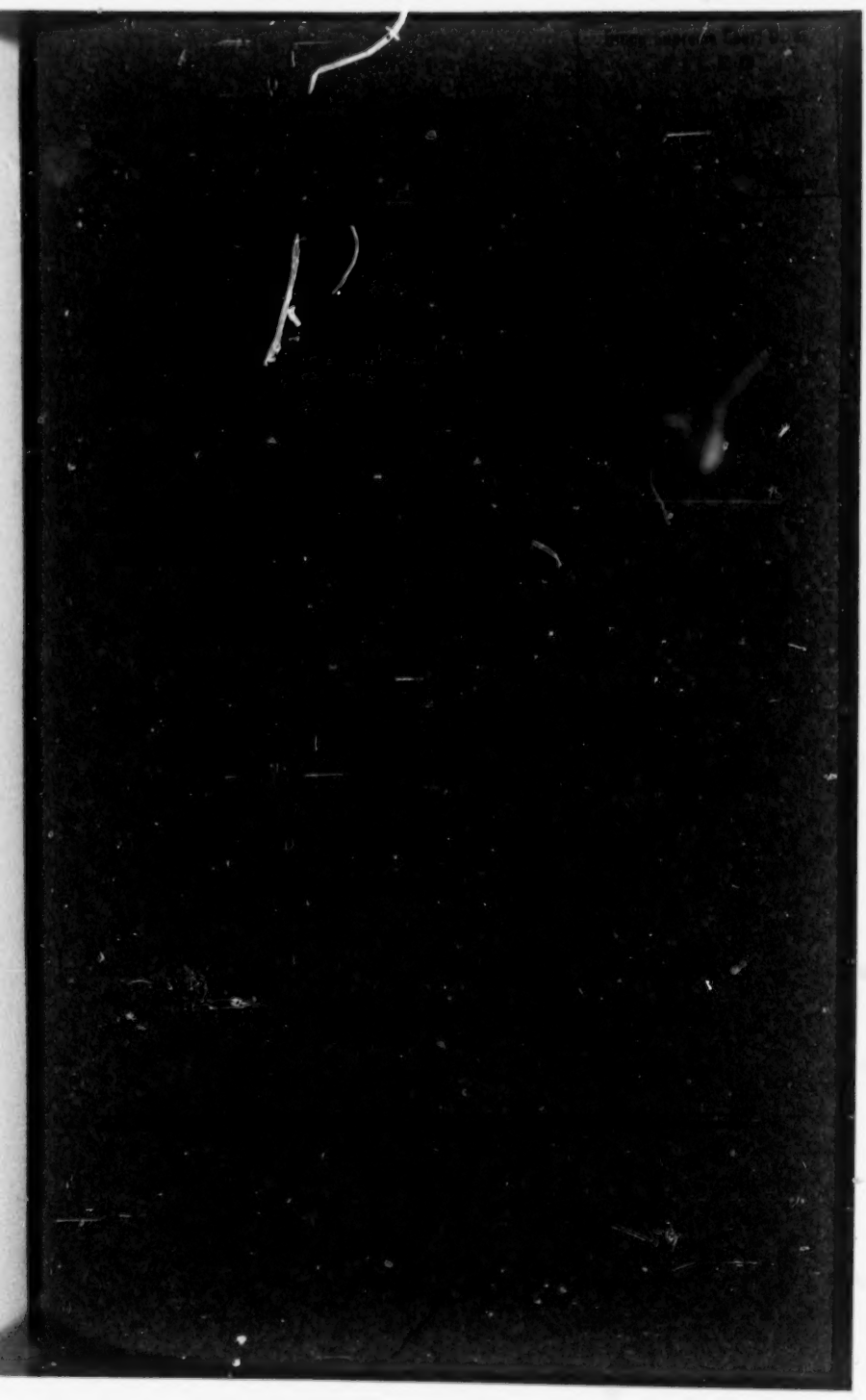

In The Supreme Court of the United States.

Reuben Hodges, William R. Clampit and Wash McKinney, Plaintiffs in Error,

vs. No. ~~280~~. 14

The United States, Defendant in Error.

Abstract, Argument and Brief

FOR PLAINTIFFS IN ERROR.

Argument.

At the October term, 1903, of the District Court of the United States in and for the Eastern Division of the Eastern District of Arkansas the grand jury returned a bill of indictment against plaintiffs in error. Stripped of its technical allegations, said indictment charged that the defendants (plaintiffs in error) did, on the 17th day of August, 1903, unlawfully and wilfully conspire together to threaten, oppress and intimidate Berry Winn et al., citizens of the United States, of African descent, in the free exercise and enjoyment of rights and privi-

leges *secured* to them by the Constitution and laws of the United States, and because of their having exercised the same, to-wit:

That said Berry Winn et al., having entered into contracts with Davis & Hodges, a sawmill partnership, by which they, the said Berry Winn et al., were to perform labor for Davis & Hodges and receive compensation therefor, and while so performing said contract, the conspirators notified said Berry Winn et al. that they must cease said labor and abandon said contracts, and by threatening that unless they did so abandon said contracts, they would injure said Berry Winn et al.

Brief and Argument.

DOES THE INDICTMENT ALLEGE FACTS SUFFICIENT TO CONSTITUTE A PUBLIC OFFENSE AGAINST THE LAWS OF THE UNITED STATES?

The indictment in this case is predicated upon the two sections of the Revised Statutes of the United States, mentioned in the demurrer, the first of which (Section 1977) reads as follows:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to *make* and *enforce contracts,* to sue and be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, license and exactions of every kind, and to no other."

Section 5508 reads as follows:

"If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway or on the

premises of another with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years; and shall, moreover, be thereafter ineligible to any office or place of honor, profit or trust created by the Constitution or laws of the United States."

That said conspiracy was formed because the said Berry Winn et al. were citizens of African descent, and by reason of said conspiracy, threats and intimidation, so performed by said conspirators, said Berry Winn et al. were prevented from carrying out their said contracts with said Davis and Hodge.

(See Tr., p. 3.)

To this indictment said defendants filed their demurrer, assigning the following reasons why the same should be sustained:

First—The matters, things and allegations therein contained do not constitute a public offense against the laws of the United States.

Second—Section 1977 of the Revised Statutes of the United States, upon which the indictment is founded, is unconstitutional.

Third—Section 1977 of the Revised Statutes, when taken and construed with Section 5508 of the same, in so far as it creates offenses and imposes penalties, is in violation of the Constitution.

Fourth—Because the offense created by the said sections are not within the jurisdiction of the United States, and are cognizable before State tribunals only.

(Tr., pp. 5 and 6.)

Said demurrer was overruled (Tr., pp. 7 to 17, inclusive), and said defendants (plaintiffs in error) were tried, convicted and sentenced to serve one year and a day in the penitentiary at Atlanta, Ga., and to pay a fine of one hundred dollars (Tr., p. 20), sued out a writ of error (Tr., p. 21), which was granted (Tr., p. 21), and executed their bonds as required by law, and filed a transcript of the proceedings in said court (Tr., p. 1) within the time provided by law.

The Government in this case contends that Congress found its authority for the enactment of Section 1977 in the Thirteenth Amendment to the Constitution, and that under said amendment and act of Congress, the African citizens of this country acquired the right to contract, and to prevent which the conspiracy is alleged to have been formed. The indictment alleged that the *right secured* to the African citizens therein named was the right "to contract their services to Davis & Hodge for compensation."

The learned district judge, in his written opinion overruling the demurrer to the indictment, sustains the position of the Government, that the "right enjoyed by the African citizens set out in the indictment was a *right* secured to them under the Constitution and the laws of the United States."

In U. S. vs. Cruikshank, 92 U. S. 542, this court said:

"To bring this case under the operation of the statute, therefore, it must appear that the right, the enjoyment of which the conspirators intended to hinder or prevent, was one granted or secured by the Constitution or laws of the United States. If it does not so appear the criminal matter charged has not been made indictable by any act of Congress."

This language was used by the court in passing upon a statute very similar to the one in question, and a section of the same act under consideration. True, in the Cruikshank case the indictment was more vague and uncertain than the indictment in this case. The court in the Cruikshank case, at page 569, makes use of this language: "All rights are not so granted or secured. Whether one is so or not is a question of law to be decided by the court, not the prosecutor."

This case is resolved into a simple question: *Is the right to contract one guaranteed or secured by the Constitution or laws of the United States?*

This is practically the first question presented by the demurrer to the indictment in the case at bar. In other words, is the right of a citizen of African descent to make or enforce a contract a right granted or secured to him by the Constitution or laws of the United States?

We are constrained to believe that the learned district judge failed to recognize the distinction between rights *declared* and *recognized*, but not *granted* or *secured* by the constitution and laws. It would seem that such a distinction exists and has been noticed by this court.

In Logan vs. U. S., 144 U. S., 263, it is said (286):

"Rights and immunities created by or dependent upon the Constitution of the United States can be protected by Congress. The form and the manner of the protection may be such as Congress, in the legitimate exercise of its legislative discretion, shall provide. These may be varied to meet the necessities of the particular right to be protected."

Further, in the same case, at page 287, it is further said:

"It was of these fundamental rights of life and liberty, not created by or dependent upon the Constitution, that the courts said, 'Sovereignty, for this purpose, rests alone with the States. It is no more the duty or within the power of the United States to punish for a conspiracy to falsely imprison or murder within a State than it would be to punish for false imprisonment or murder itself.' "

And again, at page 289, it is said:

"With regard to those acknowledged rights and privileges of the citizen, which form a part of his political inheritance derived from the mother country, and which were challenged and vindicated by centuries of stubborn resistance to arbitrary power, they belong to him as his birthright, and it is the duty of the particular State of which he is a citizen to protect and enforce them and to do naught to deprive him of their full enjoyment. When any of these rights and privileges are secured in the Constitution of the United States only by a declaration that the State or the United States shall not violate or abridge them, it is at once understood that they are not created or conferred by the Constitution, but that the Constitution only guarantees that they shall not be impaired by the State. * * * The affirmative enforcement of the rights and privileges themselves, unless something more is expressed, does not devolve upon it, but belongs to the State government as a part of its residuary sovereignty."

Can it be said that the right to contract is conferred upon any citizen by any part of the Constitution of the

United States? Is it to be presumed that the simple adoption of the Thirteenth Amendment gave the negro any greater rights as a citizen than a white man?

Citizenship under the laws of the various States of this Union is not essential to the right to contract. Aliens are permitted to contract, and to have and enforce the same rights in reference thereto as citizens. The right to contract existed long prior to the Declaration of Independence, or the adoption of the Constitution of the United States. The Thirteenth Amendment did nothing more than to create or make a freeman of a slave. Since he became a freeman the municipal laws of the land give to him the right to contract, to use and be sued in the State or municipality in which he resides.

This court has held that the right to pursue or follow any of the ordinary vocations of life are not created by the Constitution or laws of the United States, but are among the inherent and inalienable rights of man, and are, therefore, not dependent for their existence upon the Constitution.

> Butchers' Union vs. Crescent City Co., 111 U. S. 746.

In speaking of the character of legislation involved in this suit this court said in the civil rights cases, 109 U. S. 3-13, of the Thirteenth Amendment, at page 842 (Law Edition):

"It is true that slavery cannot exist without law any more than property in lands and goods can exist without law; and, therefore, the Thirteenth Amendment may be regarded as nullifying all State laws which establish or uphold slavery. * * * Conceding the major propo-

sition to be true, that Congress has a right to enact all necessary or proper laws for the obliteration and prevention of slavery, with all its badges and incidents, is the minor proposition also true, that the denial to any person of admission to the accommodations and privileges of an inn, a public conveyance or theater, does subject that person to any form of servitude, or tend to fasten upon him any badge of slavery?'"

In the case at bar, admitting the facts alleged in the indictment to be true, does it follow that the conspiracy upon a part of certain individuals to intimidate or interfere with a negro citizen in the performance of his contract fasten upon the negro any badge of slavery? Would it be held to fasten a badge of slavery upon a white man if his right to contract should be interfered with by intimidations or threats?

We do not believe that this or any other court has ever held such to be the case. The most that can be said of the acts alleged in the indictment is that they are a violation or in violation of the criminal laws of the State of Arkansas. It is a mere breach of the peace. The Thirteenth Amendment has respect not to distinction of race or class or color, but to slavery. The allegation in the indictment that the persons said to be intimidated by the defendants were persons of African descent does not give more efficiency to the indictment than it would otherwise have.

The Constitution prohibits a State from passing a law impairing the obligation of a contract. This did not give Congress power to provide laws for general enforcement of contracts, nor power to invest the courts

of the United States with power over contracts so as to enable parties to sue upon them in these courts.

In Civil Rights Cases, *supra*, page 840 (Law Edition), it is said: "Such legislation cannot properly cover the whole domain of rights appertaining to life, liberty and property, defining them and providing for their vindication. That would be to establish a code of municipal law regulative of all private rights between man and man in society. It would be to make Congress take the place of State Legislatures and to supersede them. It is absurd to affirm that, because the rights of life, liberty and property, which include all civil rights that men have, are by amendment sought to be protected against invasion on the part of the State without due process of law, Congress may, therefore, provide due process of law for their vindication in every case."

An example of some of the rights guaranteed or secured by the Constitution and laws of the United States are such as patents, trade marks, right to homestead public lands, to vote in Federal elections, etc.

United States vs. Waddell, 112 U. S. 76.

But a conspiracy to intimidate and compel officers of a mining company to discharge their employes, or to compel the employes to leave the service of the company, is not an offense against the laws of the United States.

Pettibone vs. United States, 149 U. S. 202.

The reason is that the right, the enjoyment of which the conspirators are intending to deprive is not a right secured by the Constitution or laws of the United States.

It is contended by the government that the injured persons are negroes, or citizens of African descent, and that the indictment charges that the right which they enjoy, and to prevent which a conspiracy was formed, is a right secured to them under and by virtue of the Thirteenth Amendment to the Constitution, and the laws passed by Congress in pursuance thereto. The learned district judge, in his opinion overruling the demurrer herein to the indictment (Tr., p. 8), said:

"If the power to enact the legislation involved in this proceeding exists at all, it must have been granted by some of the provisions of the last three amendments to the Constitution, the thirteenth, fourteenth and fifteenth."

The learned district judge, because of the allegation in the demurrer, that sections 1979 and 5508 were unconstitutional, appears to have given more attention to this ground of the demurrer than to the first ground, which challenges the sufficiency of the indictment. While it may be true that both the sections referred to are constitutional, the indictment does not come within the provisions of either, for the reason that the facts alleged and upon which it sought to base the prosecution is a mere interference by one individual with the right of another to contract. And, if such be true, an individual, whether white or black, has the right of redress either in the criminal or civil courts of the State of Arkansas.

The Emancipation Proclamation, by removing the disability of slavery, made the negro a citizen, and placed

him upon the same plane before the law as the white race.

U. S. vs. Rhodes, 1 Abb. 28.

1 Kent Com., 298 and note.

State vs. Manuel, 4 Dev. & Batt. (N. C). 28.

In the last-mentioned authority will be found an unanswerable argument upon that proposition. In discussing the question of a free negro, Judge Gaston, speaking for the court, said: "Under the laws of this State, all human beings within it who are not slaves fall within one of two classes, aliens or citizens. Slaves manumitted here become free men, and all free persons born within the State are citizens."

This case was cited and approved in:

State vs. Newsom, 5 Ired. (N. C.) 250.

If the emancipation of a native born slave, by removing the disability of slavery, made him a citizen, without any further act of Congress, then hand in hand came with it all the rights, duties and privileges accorded to the white man, under the Constitution and laws of the nation. If, on the other hand, the African citizen acquired his rights of life, liberty and pursuit of happiness, which includes the right to contract, from the statutes under consideration or the Thirteenth Amendment, he has acquired rights, privileges and protection by virtue of that instrument which the white man, by whom it was made, did not and could not secure to himself. The white man is powerless to invoke the aid of the courts of the United States to protect him against a con-

spiracy to injure, oppress, threaten or intimidate him in the enjoyment of his right to contract, because that is not a right guaranteed or secured to him by the Constitution or laws. And any lawless number of citizens of African descent can conspire together for the purpose of depriving a white man of the privilege of completing a contract already made, and yet the white man has no protection from the United States courts.

According to the theory of the Government in this case, when the *color* is changed and the white man becomes the conspirator, and the citizen of African descent the victim, the strong arm of the government can and will be stretched forth to protect the citizen of African descent. It cannot be possible that the Thirteenth Amendment can give to the Congress of the United States the right to enact a code of municipal laws merely for the purpose of protecting citizens of African descent in their right to contract.

If individuals should undertake to enforce upon citizens of African descent or upon any other persons any form or badge of slavery, it cannot be doubted that this would make a cause of action cognizable in the United States courts.

The peonage cases recently decided in the United States District Court, for the district of Alabama, are all illustrations of the applicability of the laws under discussion.

In discussing the constitutionality of section 5519 of the Revised Statutes, this court, in the case of the United States vs. Harris, 106 U. S. 626 (S. C. 16 Otto 629-644), this court said, at page 294 (Law Ed.):

"Under that section it would be an offense for two or more white persons to conspire for the purpose of depriving any white person of the equal protection of the laws. It would be an offense for two or more colored persons, enfranchised slaves, to conspire with the same purpose against a white citizen or against any colored citizen who had never been a slave. Even if the amendment is held to be directed against the action of private individuals as well as against the States and the United States, the law under consideration covers cases both within and without the provisions of the amendment. * * * A law under which two or more free white private citizens could be punished for conspiring or going in disguise for the purpose of depriving any other free white citizen of a right accorded by the law of the State to all classes of persons, as, for instance, the *right to make a contract,* bring a suit or give evidence, clearly cannot be authorized by the amendment which simply prohibits slavery or involuntary servitude."

Can it be said, in the face of this decision, that it is a violation of the Thirteenth Amendment, or of any law of the United States based upon it, for white citizens to conspire, to threaten, intimidate or interfere with citizens of African descent in their right to contract? This certainly cannot be one of the rights guaranteed or secured by the Thirteenth Amendment, or any of the laws based upon it.

We believe that it can be safely said there is no decision in this court which even tends to support the conclusion of the learned district judge.

The act of these defendants in marching to a place where the citizens of African descent were engaged in

labor and by threats and intimidation causing them to stop work is not a case cognizable by the United States courts.

The indictment in no place alleges that the defendants or either of them went in disguise upon the highway or premises of another person. The indictment wholly ignores this feature of the statute. It seems from the indictment before the court that the defendants proceeded openly and without any disguise. This is a penal statute, and under the rule adopted by all courts must be strictly construed. The allegation would, therefore, be insufficient if it failed to allege that the defendants or some of them went in disguise on the highway and premises of another. The last clause of the statute being, "or if two or more persons go in disguise on the highway or on the premises of another with intent to prevent or hinder his free exercise or enjoyment of any right or privilege secured," etc., the allegation in the indictment is that the defendants undertook, being then and there armed with deadly weapons, to threaten and intimidate the workmen there employed, with the purpose of compelling them by force and threat, and otherwise, to remove from said place of business, to stop said work and to cease the enjoyment of said right and privilege, meaning the right and privilege of contract.

It is very clear that the law is not applicable to the facts alleged in the indictment.

For this reason we submit that the case should be reversed, with direction to sustain the first ground of the demurrer.

Respectfully submitted,

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